

EXHIBIT E

DR. RODNEY CARLISLE

EXHIBIT E-1

DR. RODNEY CARLISLE

PART 1

AFFIDAVIT AND REPORT

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
IN ADMIRALTY

ODYSSEY MARINE EXPLORATION, INC.	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	Case No: 8:07-CV-00614-SDM-MAP
THE UNIDENTIFIED, SHIPWRECKED VESSEL,	:	
if any, its apparel, tackle, appurtenances and	:	
cargo located within a five mile radius of the	:	
center point coordinates provided to the Court	:	
under seal,	:	
	:	
Defendant;	:	
<i>in rem</i>	:	
and	:	
The Kingdom of Spain and the Republic of Peru,	:	
	:	
Claimants.	:	
_____	/:	

AFFIDAVIT OF RODNEY CARLISLE
IN SUPPORT OF ODYSSEY MARINE EXPLORATION, INC.'S RESPONSE TO
CLAIMANT, SPAIN'S, MOTION TO DISMISS OR FOR SUMMARY JUDGMENT

This AFFIDAVIT is being filed in case 8:07-CV-00614-SDM-MAP.

1. My full name is Rodney Carlisle. My legal address is 6 Madison Circle, Carlisle, PA 17015. I am competent to testify as to all facts and issues addressed in the report attached hereto as Exhibit E.

2. I prepared the attached report for Odyssey Marine Exploration Inc. in support of its Response to Claimant, Spain's, Motion to Dismiss or for Summary Judgment in this case.

3. I have personal knowledge regarding the information contained herein and hereby swear that the information is true and accurate to the best of my knowledge.

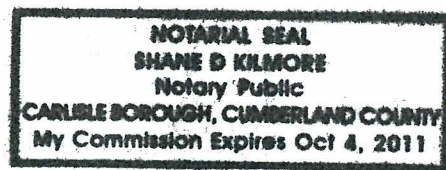
I CERTIFY THAT THE ABOVE IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE

Rodney Carlisle
Rodney Carlisle

STATE OF Pa)
COUNTY OF Cumberland)

The foregoing instrument was acknowledged before me this 12th day of November, 2008, by Rodney Carlisle, who is personally known by me.

Shane Kilmore
Notary Public
My Commission expires: Oct. 4th 2011



Historical Report for Odyssey Marine Exploration

Rodney Carlisle, Ph. D.

November 5, 2008

1. I was contacted by Odyssey Marine on August 15, 2008, and asked to review documents collected in the “Black Swan” case, and based on those and other documents that would be made available, on secondary historical sources, and on my own background as an historian, to comment on whether the contents of the lost ship were subject to the doctrine of sovereign immunity. I am a retired professor of History from Rutgers University. My research and teaching fields have included maritime history, and I am still active in that field. I received my A.B. degree from Harvard College, and my doctorate in history from the University of California at Berkeley.
2. I am the author or editor of more than 30 books on a variety of subjects, including, but not exclusively, naval and maritime affairs. Among my teaching fields at Rutgers University was Latin American history. Among my many published works there is no prior work on the specific events covered in this report. My resume is attached to this document.¹
3. After a review of documents provided by Odyssey from research conducted in archives in Spain and Britain, of secondary sources, and of documents and reports

¹ Resume of Rodney Carlisle. ANNEX 1.

NOTE: In the following citations, these abbreviations will be used:

AGI	Archivo General de Indies
AGM	Archivo General Marinas
AGS	Archivo General de Simancas
AHN	Archivo Historico National
OME	Odyssey Marine Exploration collection
PRO	Public Records Office (Britain)

prepared for the Claimant in this case, I prepared the report which follows. The report has three sections.

- Executive Summary of my findings.
- A brief account of the events surrounding the loss of the ship *Mercedes*, on October 5, 1804.
- A detailed discussion of issues pertinent to the claims by the Claimant that the debris collected by Odyssey Marine off Cape St. Mary, Portugal are subject to the doctrine of sovereign immunity. The review of those issues is supported by annotation to annexed copies of archival primary documents, published primary documents, and secondary sources.

4. **Executive Summary of findings**

- If, as the Claimant claims, the Black Swan debris site is the result of the loss of the frigate *Mercedes* on October 5, 1804, the following observations, based on extensive documentation, regarding that ship pertain. I have found that the facts do not support the contention that the ship was a ship of war sailing on a warlike mission in a time of war. Rather, the facts demonstrate that the ship sailed in time of peace, that it was a naval ship sailing on assignment for the Maritime Mail, that it was dedicated to carrying mostly private cargo for which shipping charges were collected, and that its military character was diminished by removal of some guns from the ships of the Spanish flotilla, by accommodation for passengers, by stowage of cargo, and by a diminished military personnel complement.

- The *Mercedes* sailed in time of peace, not in time of war.
- The *Mercedes* mission, as defined by her cargo, was a commercial one, to bring both privately-owned specie and private cargo and civilian passengers from South America to Spain. A small proportion of public goods laden aboard *Mercedes* was commercial cargo and specie on the personal account of the King of Spain. The ship sailed as a packet boat or “*pacquebote*” and charged private shippers for their cargoes.
- Evidence leads me to conclude that the *Mercedes* reflected in her personnel and her cargo functions performed by the Spanish Maritime Mail (*Correos Maritimos*).
- The rapid defeat of the Spanish flotilla by the British war frigates further demonstrates the commercial, rather than military nature of the *Mercedes* mission.
- The historical evidence supports the view that the frigate *Mercedes* was completely destroyed, with the exception of a piece of the prow that floated away from the scene of the battle for more than an hour and a quarter.
- Following the loss of the *Mercedes* to British attack, some of the survivors of the ship and some of the heirs of those killed in the destruction of the ship filed personal, private claims against Britain for their losses. Some of those claims were honored.

- The personal and private natures of the claims for losses from the *Mercedes* were recognized by claimants, by the British government, and by the Spanish government at the time and for years afterwards.

5. Summary of the events of the period

The loss of the *Mercedes* on October 5, 1804 was a pivotal event in the history of Spain and of the Spanish Empire more broadly. For this reason, it receives at least a cursory treatment in most historical literature that sets out to detail the history of Spain or of the Spanish Empire in this period. However, the details of the nature of the cargo and the nature of the ship and her voyage are best established from a fresh review of published and unpublished primary documents, and a review of recent published and unpublished scholarly work.

6. There is some variation in interpretation in secondary historical treatments of the event. Even so, published accounts of the incident consistently reflect the following facts: Britain and Spain were at peace when the *Mercedes* was destroyed. The act of destroying the ship was a major contributing factor in the decision two months later by the Spanish Crown to declare that a state of war existed. The *Mercedes* was part of a four-frigate “merchant fleet” engaged in carrying wealth, both in the form of goods and in the form of specie, for private merchants, for the Royal household and for the Spanish government, from Callao (now in Peru) and Montevideo (now in Uruguay) to Spain.² The flotilla of four frigates was not on a war mission, but on a transport mission. The British did not attack the ships because they thought they represented a military threat, but rather because they sought to interdict the money aboard and to “detain” the ships and

² The term “merchant fleet” was employed by Spanish Vice Consul Fuge in Plymouth, in correspondence, 11/20/1804, Estado 8882, AGS. ANNEX 2

their cargoes in Britain. Those facts are established in both the documents and in the secondary historical treatment based on documentary evidence. To imply that the four Spanish frigates were warships on a warlike mission in time of war would fly in the face of well-established historical knowledge. The ships were naval ships on assignment for the Maritime Mail, carrying naval personnel, but also carrying civilian passengers including women and children, merchant goods, and Maritime Mail funds; the cargoes were *entirely* commercial and governmental funds and merchandise, not military in character. At least four of the personnel working aboard the ship were civilians, including a *Maestra de plata* (“silver master”), a clergyman, and two civilian pilots. Records indicate that there were 280 people aboard, 40 or 50 of whom were rescued. It is significant to note that the full complement for this vessel as a warship was 348, and thus the ship was severely undermanned on this voyage for anything but a commercial mission.³

7. It should be noted that the presentations of the facts of the case in the historical reports prepared by the Claimant suffer from several oversights or distortions. In particular, the reports consistently state that the *Mercedes* and the other ships of the flotilla were “warships.”⁴ As noted above, it is simplistic to regard these four cargo-carrying naval ships as warships. The report by Hugo O’Donnell also incorrectly suggests that these four ships sailed during “time of war,” although a close reading of that

³ Claimant’s Exhibit A, p. 10. Captain Moore, who had every reason to give a full account of the strength of the Spanish complement, noted in a statement “Force of the Spanish Squadron,” that the *Mercedes* had “280 men” aboard, 40 of whom were saved. He did not mention whether this count included the passengers. Moore to Cornwallis, statement with Document No 354, page 90 in John Leyland, *Dispatches and Letters Relating to the Blockade of Brest, 1803-1805, Volume II*, (London: Navy Records Society, 1902). Cited henceforth as *Dispatches and Letters Relating to the Blockade of Brest, 1803-1805*. The same report was published in the *London Gazette*, October 20-23 1804.

⁴ Claimant’s Exhibit C, pages 8-9

report shows that the ships sailed during peacetime, and that war was declared only as a *result* of the attack.⁵ Furthermore, both of the Claimants' historical reports fail to even mention that the vast majority of the cargo aboard all four ships was carried under the heading of "*Particulares*" that referred to cargo specifically owned by or consigned to private merchants.⁶ The value of that private cargo was more than twice the value of the private goods owned by the King of Spain and separate shipments for the State on the ship. All of these apparently minor distortions, oversights, and coloring of the facts might lead a reader to several incorrect conclusions about the nature of the voyage. It may be pertinent to note that the report for the Claimants by Hugo O'Donnell presents facts with an entirely different slant than that same author used in his published work. He clearly stated in his *published* work that the nations were at peace at the time of the event. Furthermore, in his published account of the event, O'Donnell makes clear that the *Mercedes* was entirely unprepared for war because of her cargo-carrying function.⁷

8. The facts of the historical context and a narrative of the events follow:

The *Mercedes* was one ship in a squadron of four Spanish frigates that departed Montevideo, on August 9, 1804, under the command of Jose Bustamante de Guerra, on a voyage for Cadiz, Spain. At the time of the departure, Spain and Britain were at peace.

⁵ Claimant's Exhibit C, p. 12

⁶ The term "*particulares*," meaning "private" appears in the documents provided in Claimant's Exhibit C. See for example, p. 55. However, no translation to English is provided, conveniently overlooking the fact that the vast majority of the goods aboard were private.

⁷ See for example, the passage in Hugo O'Donnell, *La Campana de Trafalgar, tres naciones en pugna por el dominio del mar* (1805). (La esfera de los Libros, Madrid, 2005) on page 57, in which he points out that the ships of the Spanish flotilla were incapable of putting in practice an effective plan of battle because they sailed in an "epoch of peace" and the holds of the frigates were loaded with merchandise that obstructed the firing of the batteries: "*el no estar debidamente apercebidos los buques espanoles por considerarse en epoca de paz, y el no poder poner en practica un plan de combate eficaz por ir cargadas las fragates con fardos de mercancías que obstaculizaban el fuego en la bateria y el combate en cubierta.*" Comparing his treatment of the battle in this 2005 published work and that in his 2008 deposition, the contrast is striking. This is perhaps the most pertinent of several discrepancies between what the author says in his published scholarly work, and in his commissioned report for the Claimants. ANNEX 3

Britain and Spain had been allied in the First Coalition against revolutionary France in 1793-1795. Spain was allied with France against Britain in the period 1796-1802, but with the Peace of Amiens in 1802, those three nations were at peace. Spain worked to remain neutral in the war between France and Britain that began in May 1803. Britain and Spain remained at peace until late in 1804 after the destruction of the *Mercedes*. However, Spain had signed the first treaty of San Ildefonso in 1796, and a second in 1800 promising aid to France. Napoleon invoked these commitments in 1803, by demanding that Spain provide aid to France. Spain, a country suffering from plague, from depletion of resources due to the wars, and in great difficulty maintaining trade as well as communications with its overseas colonies, agreed to make regular cash payments in lieu of providing troops to aid Napoleon.⁸ Spain intended that the payment would meet the obligation to France under the treaties of San Ildefonso. By making the payments instead of providing troops, Spain intended to remain neutral in the conflict between France and Britain. The payment agreement was implemented beginning in October, 1803. The British viewed the payments and the provision of port facilities to Napoleon as extremely un-neutral acts, despite Spanish protestations that Spain sought to maintain peace and neutrality *vis a vis* Britain.⁹

In a series of diplomatic discussions over the period December 1803 through March of 1804, the British argued that they could accept Spanish neutrality as long as Spanish ships were only armed defensively, as long as there was no movement of soldiers to aid France, and as long as the British could continue to use Spanish port facilities.

⁸ Jacques Barbier, "Peninsular Finance and Colonial Trade: the Dilemma of Charles IV's Spain," *Journal of Latin American Studies* (Britain), vol 12, No. 1, pp 21-37. ANNEX 4

⁹ Martin A.S. Hume, *Modern Spain* (New York: Putnam, 1904) pp 66-68, for the impoverished state of Spain and the payments to France. ANNEX 5

Furthermore, they indicated that they would continue to protest the payment of funds to France, but they would accept and recognize Spanish neutrality. As a consequence of this position, the British government continued to respect Spanish Neutrality until receiving a report from Admiral Alexander Cochrane, suggesting that the Spanish were preparing for war by bringing in funds from the overseas colonies.¹⁰

George III, the British monarch, through an Order in Council following the Cochrane report, decided to interdict the Spanish cargo flotilla bringing specie and other forms of wealth from the Spanish overseas empire. The secret order was passed by Admiral William Cornwallis to Captain Graham Moore on September 22, 1804, “to intercept if possible, two Spanish frigates expected with treasure from South America, and to detain the vessels containing such treasure until his Majesty’s pleasure shall be further known.”¹¹ Moore commanded four British ships that set out to seize the treasure ships. Bustamante and the other officers of the small Spanish flotilla were unaware of this decision. On October 5, 1804, the squadron of four well-armed British frigates under the command of Moore interdicted the four Spanish cargo frigates off Cape St. Mary, Portugal, in international waters, as they approached their destination, Cadiz, 100 miles further on. The British explained that the ships were to be taken to British ports and detained. Since no war had been declared, and since the British ships were not acting as

¹⁰ In addition to the coverage by Hume, cited above, the memorandum from Cochrane to Lord Melville September 5, 1804, that led to the British decision to interdict ships is found in Document 332, p. 64-65, *Dispatches and Letters Relating to the Blockade of Brest, 1803-1805*. On p. 65, editor Leyland observed that the Cochrane’s argument that money from overseas would bring Spain into war against Britain, is what convinced the British Ministers to order the seizure of the cargo ships on October 5. ANNEX 6

¹¹ Cornwallis to Moore, September 22, 1804, Document #346, p. 75-76, collected in John Leyland, *Dispatches and Letters Relating to the Blockade of Brest, 1803-1805, Volume II*, (London: Navy Records Society, 1902). Cited henceforth as *Dispatches and Letters Relating to the Blockade of Brest, 1803-1805*. ANNEX 6

part of a formal blockade, the Spanish officers correctly regarded the action as illegal and chose to resist.

After a brief exchange of gunfire, the *Mercedes* blew up, killing most of those aboard, including a number of women and children passengers. Within a short period, the remaining three Spanish frigates were so outgunned, and their rigging so damaged, that their officers surrendered the ships.¹²

Some 40 to 50 survivors of the *Mercedes* were retrieved by the Spanish and British ships from the water, and the three surviving ships were taken to Plymouth, where the crews and officers were interned and the ships held. Federico Gravina, the Spanish Minister to Paris, after hearing of the event, wrote to Godoy the “Prince of Peace,” in Spain, reporting news of the British frigates “which had twice the strength of ours and attacked while in peace.”¹³ Other officials of Spain, for example the Spanish Minister to Britain, Joaquin De Anduaga, reacted with similar shock and dismay that four Spanish ships carrying cargo had been attacked at sea during time of peace by the Royal Navy, an outright violation of the established “law of nations.” In Britain, opinion was divided, with opponents of the Government pointing out that the unprovoked and pre-emptive nature of the attack during peacetime was illegal under the law of nations. A balanced and objective, rather than pro-British interpretation of the events, shows that Spain was grievously wronged by the seizure of the ships. Furthermore, Spain’s genuine efforts to

¹² It should be noted that the account presented here is in perfect conformity with the *published* account of the action by Hugo O’Donnell in *La Campana de Trafalgar, tres naciones en pugna por el dominio del mar* (1805). (*La esfera de los Libros, Madrid, 2005*), pp. 56-57. O’Donnell is one of the historians who prepared research for the Claimants, in Exhibit C. ANNEX 3

¹³ Frederica Gravina, Spain’s Ambassador to France, to the Minister of Peace, November 2, 1804, Paris, AGP Reserved papers of Fernando VII, t.100, fol 254, BRAH, Col JPG ms 11/8304 fol 12 (copy) as reproduced in Jose Ignacio Gonzalez-Aller Hierro, Minister of Defense, Spanish Navy, *The Trafalgar Campaign 1804-1805*, Documental Corpus Preserved in the Spanish Archives, Volume 1 (trans. Rebecca

maintain neutrality when caught between Napoleon's land power and Britain's sea power demonstrated great patience and forbearance.¹⁴

Over the period from October 1803 through early November 1804, the British representatives in Spain attempted to pressure the Spanish into revealing the amount of the subsidy to France, and into providing more equal treatment to Britain on a variety of issues. Bartholemew Frere, British *charge de affairs* in Madrid, took over after the departure of his brother, J.H.Frere, who had served until August 1804 as the British Minister in Madrid; Bartholemew Frere served until mid-November 1804. J.H. Frere's diplomacy was so unsuccessful, that many in Britain blamed the rupture of relations between Spain and Britain on him.¹⁵

9. From the diplomatic negotiations that proceeded in 1804 *both before and after* the attack of October 5, it is clear that *both* Britain and Spain hoped to remain at peace. The Spanish authorities attempted to continue negotiations, even after Bartholemew Frere demanded his passports and sought to break off diplomatic relations between the two countries. The Spanish were in no position to engage in war against Britain, facing a series of problems including plague, discontent in the overseas colonies over the so-called free-trade policy that opened new ports to trade, problems of gaining sufficient finances, and facing internal provincial rebellions, such as one in the Basque region. Britain would have preferred that the Spanish cease providing Napoleon with a subsidy. Fearing a cross-channel invasion by the French, the British did not want to have the

Blankenship), p. 188, document #30 in the Gonzalez-Aller listing. Hereafter cited as Gonzalez-Aller, *The Trafalgar Campaign*. ANNEX 7

¹⁴ Regarding Spain at peace and law of nations: correspondence of Anduaga to Harrowby, October 26, 1804, Treasury Section, PRO; Henry Maddock, *Thoughts on the Order to Detain the Spanish Frigates* (London: J. Brettell, 1805) pp. 4-5. ANNEX 8

¹⁵ Frederick H. Black, "Diplomatic Struggles: British Support in Spain and Portugal, 1800-1810," doctoral dissertation, Florida State University, 2005, p. 93. ANNEX 9

Spanish fleet join with the French fleet, making Napoleon's plans more likely to succeed. The British government had hoped that the four Spanish frigates carrying specie and cargo would have surrendered to detention peacefully, without gunfire. Nevertheless, the British representative in Spain, and the British government showed no inclination to allow Spain to continue to receive specie from the colonies and to provide the subsidy to France.¹⁶

10. It is significant to note that the surviving three ships of the flotilla were held in Britain as "*droits* of the King," rather than as "*droits* of the Admiralty." Under established British practice, ships taken in time of peace on the order of the King, were held in the King's name, while ships taken in time of war were held in the name of the Admiralty. This legal distinction fully substantiates the fact that under British law, Spain and Britain were at peace at the time of the seizure.¹⁷ Over the next few years, Spanish officers and men who had money and or goods aboard the destroyed ship or aboard the other ships, or surviving family members of those killed, filed claims for payment or distribution of the funds. In some cases, the British made payments against the claims. Furthermore, private merchants held claims to the vast majority of the funds aboard, that is, 590,000 pesos "on account of the merchants" as compared with 221,000 pesos "on account of the King" of Spain.¹⁸ Although these claims were against funds held by the

¹⁶ Martin A.S. Hume, *Modern Spain* (New York: Putnam, 1904) pp 66-68 [ANNEX 5] shows how unprepared Spain was for war; the British position is made clear in documents in British Foreign Office, *Papers Relative to the Discussion with Spain in 1802, 1803, and 1804* (London, A. Straman, 1805), cited henceforth as *Papers Relative to the Discussion with Spain*, for example, the Harrowby letter to Frere, p. 197. ANNEX 14

¹⁷ Richard Hill, *The Prizes of War: The Naval Prize System in the Napoleonic Wars, 1793-1815*, (Phoenix Mill [Britain]: Sutton Publishing Limited, 1998), p. 88-89. Cited henceforth as *The Prizes of War*. ANNEX 10

¹⁸ Enclosure with letter, Graham Moore to Cornwallis, dated 19 October 1804, as Document 364, p. 98-100 in *Dispatches and Letters Relating to the Blockade of Brest, 1803-1805*. This is the British accounting; various sources provide different amounts, but roughly in the same proportion of mostly private funds and about 25 to 30 per cent royal and state funds. ANNEX 6

British King, it was the British practice to have such claims (whether *droit* of King or *droit* of Admiralty) to be handled by the Admiralty.¹⁹ George Canning was the treasurer of the Admiralty at the time and it was his office that handled the funds.²⁰ One of the claimants for losses aboard the *Mercedes* who had lost family and fortune on that ship, Don Diego de Alvear, lobbied with Canning for a share of money from funds recovered from the other ships and did in fact receive 6,000 pounds sterling.²¹

Detailed discussion of pertinent issues

11. *England and Spain were not at war when the attack took place.* England and Spain were not at war on October 5, 1804. Because of the attack, Spain's King Carlos IV, after attempted negotiations, declared on December 12, 1804 that the British had initiated a state of war by their actions on October 5. The Spanish declaration of war (as cited in the historical report for the Claimant by Deleste), also notes that the attack came during time of peace.²² It is true that the British had attacked several Spanish ships during the months preceding the October attack, but the Spanish did not choose to regard those attacks as acts of war.²³ It is also very clear that General Bustamante (in charge of the Spanish flotilla) had no knowledge of the British policy until his ships were accosted,

¹⁹ Richard Hill, *The Prizes of War*, p. 88-89 ANNEX 10

²⁰ Frederick Black, "Diplomatic Struggles: British Support in Spain and Portugal, 1800-1810," p. 75. ANNEX 9

²¹ Don Diego de Alvear, who had lost his fortune and family in the destruction of the *Mercedes*, lobbied with George Canning to get funds from the captured ships to reimburse him for his losses. Canning declined, however, to arrange further distributions to others. Canning explained that he had provided de Alvear with relief as a personal matter, but he could not go beyond his official duties further. Canning to de Alvear, September 12, 1805. No. 3, 6, PRO. De Alvear subsequently received another 31,000 pesos, reimbursing him for his full claim. ANNEX 11

²² Claimant's Exhibit A, Paragraph 27, p. 13-14.

²³ In December 1803, the British frigate *Aeolus* fired on the Spanish courier corvette *Urquijo* in the Caribbean; however, that incident and other minor clashes did not lead to war. Michael Jones, "Fear and Domination: Pierre Riel, the Marquis de Beurnonville at the Spanish Court and Napoleon Bonaparte's Spanish Policy, 1802-05," doctoral dissertation, Florida State University, 2004, page 151. Henceforth cited as "Fear and Domination." ANNEX 12

and that he assumed that his voyage could be completed as one during peacetime.²⁴

Contemporary documents and secondary accounts of the period show that the attack by the British naval frigates on the Spanish treasure frigates during time of peace was the event that precipitated war between Spain and Britain. Spanish Minister Plenipotentiary to Britain Joaquin de Anduaga continued to attempt to negotiate and maintain the state of peace even after learning of the attack of October 5, 1804.²⁵ Even after the Spanish Secretary of State for Foreign Affairs, Pedro Cevallos, heard of the destruction of the *Mercedes*, on November 6, 1804, the Spanish continued to attempt to negotiate with *Charge de Affairs* Bartholemew Frere, and through Spanish Minister de Anduaga in London.²⁶ Negotiations to maintain peace, even though carried on in a rather strained atmosphere, continued both in Madrid and in London for fully a month after the destruction of the *Mercedes*.²⁷ Meanwhile, in Spain, Spanish Secretary of State for

²⁴ Agustin Gonzales used the expression “*Tomadas por sorpresa*” (“taken by surprise,”) to describe the plight of Bustamante and his officers. Agustin Rodriguez Gonzalez. *Trafalgar y el conflicto naval englo esponol del siglo XVII* (San Sebastian de los Reyes, Madrid, Actas 2005), p. 309. Cited henceforth as Gonzalez, *Trafalgar*. Bustamante had removed guns from the *Medea* in Montevideo on request of the governor for arms. [ANNEX] 13 Joe Torre Revello, *El Marques de SobreMonte* (Instituto de Investigaciones Cientificas, Buenos Aires 1946), p. 32.

²⁵ 11 Nov 1804. Anduaga to Harrowby, notes detentions as affront to peace [which still existed] No 48, p. 252 *Papers Relative to the Discussions With Spain*; December 22, 1804. Anduaga to Harrowby complaining of B. Frere’s request to receive his passports, and efforts by Spain to maintain peace. [Note this is AFTER Spanish declaration of an existing state of war.] Translation of Doc 51, beginning page 276 *Papers Relative to the Discussions with Spain*. ANNEX 14

²⁶ Knowledge on November 6: Godoy, Minister of Peace to Feliz Tejada, BRAH, Col JPG, ms 11/8307 November 6, 1804 in Gonzalez-Aller, *The Trafalgar Campaign*, p. 190, Document 33 [ANNEX 15]; continuing effort to negotiate with B. Frere as late as November 1804: Anduaga to Harrowby, December 22, 1804, points out that even after learning of the destruction of the *Mercedes*, Carlos IV “could not persuade himself that it (the outrage) had been caused by an Order issued by the British Government,” and asked Anduaga to ask for explanations of the detention of the frigates. The Spanish King “could not resolve to take any Measure which had the least Appearance of Hostility. So much had he at Heart the Continuance of Peace.” *Papers Relative to the Discussion with Spain*, p. 289-290. ANNEX 14

²⁷ *Papers Relative to the Discussion with Spain*, p. 189 through p. 291 covers the discussions between Spain and Britain after October 5, 1804 and before December 12, 1804, the date of the Spanish declaration that a state of war had been initiated by Britain. On p. 193, Lord Harrowby explained how he told the Spanish Minister, Anduaga that it was not the intention of Britain to place the two countries in a state of war; on p. 197 B. Frere, the British *charge de affairs* in Madrid, reported on October 27 that he continued to negotiate with the Spanish Minister for Foreign Affairs, Pedro Cevallos. Other documents through the

Foreign Affairs, Pedro Cevallos, continued to attempt to meet British demands in discussions with Bartholemew Frere, the British *charge de affairs* in Spain. One historian noted that “Regardless of Britain’s perfidious attack on the treasure fleet and Frere’s departure [from Madrid], the two nations still tried to avoid war.”²⁸ Finally, a full month after those negotiations broke down, on December 12, 1804, Carlos IV of Spain issued a statement declaring that a state of war initiated by Britain existed. He pointed out that it was brought about by the attack on “frigates that were sailing with the complete security that peace inspires.” They had been attacked “without consideration for the financial cargo coming to help a faithful nation in its hour of need.”²⁹ He asked rhetorically, “what satisfaction would it give them [the British] to destroy a frigate such as the *Mercedes*, all of its cargo, its crew and passengers who have all died as the innocent victims of a most detestable political act?”³⁰ Clearly the King of Spain in 1804 correctly understood that the *Mercedes* was a ship carrying “financial cargo” in time of peace, and he treated that attack as the major *casus belli* or act of war by Britain. The British did not formally declare war on Spain until January 11, 1805.³¹

12. *The ships of the Spanish squadron were not outfitted for war and on the contrary they were engaged in a packet service and commercial mission.* The Spanish ships were defensively armed, showing Spanish compliance with the terms of neutrality as imposed by Britain, but they were not sent out with the intention of engaging in battle. Rather, they were clearly intended to transport specie and goods, evidently on assignment to the civilian *Correos Maritimos*. They and other ships carrying mixed Royal and private

section p 189-291 demonstrate the continuing effort by both Britain and Spain to find a continuing peaceful path of Spanish neutrality, even after the attack of October 5, 1804. ANNEX 14

²⁸ Michael Jones, “Fear and Domination,” doctoral dissertation, 2004, p. 182. ANNEX 12

²⁹ Spanish Declaration of state of war, p. 3 also Deleste, Claimant’s Exhibit A, p 13-14.

cargo were designated as “*paquebotes*” or packet boats.³² Thus the voyage of these ships was a packet voyage and commercial cargo voyage in nature and not a “warship” mission. The light armaments aboard were sufficient to repel pirates or privateers, but not to resist an attack by four powerfully armed war frigates. The great majority of the goods aboard the ships were private property as demonstrated in numerous documents.³³ The Spanish Minister Anduaga explained that it was a mistaken idea that the funds aboard *Mercedes* were mostly Royal. Instead, he pointed out, only about one-fourth of the funds were “King’s” money.³⁴ Documents also show that private merchants were charged one per cent freight charge based on the value of the cargo they shipped, while shipments of similar goods and specie by the Crown were carried aboard without a charge. The charge was collected at the point of departure from the Americas, not on

³⁰ Spanish Declaration of state of war, p.4.

³¹ Richard Hill, *The Prizes of War*, p. 88. ANNEX 10

³² The use of the term “*paquebotes*” in emulation of the British usage, “packet boat,” is detailed in Antonia Heredia Herrera, *Los Fondos Documentales De Los “Correos Maritimos”*: Una Seccion Del Archivo General de Indias, from the proceedings of *Coloquio Internacional de Historia Maritima*, v. IV. (Cited henceforth as “*Documents of the Correos Maritimos*”), p. 858, and 865-868. ANNEX 13

³³ Private nature of most of the goods aboard are demonstrated in many documents. A full listing of the goods loaded aboard and the specific owners is found in the 173-page presentation in Lima, *Duplicados de Registros Embarque, 1797-1804*, Document 1535, Lima Doc 1440, AGI, henceforth cited as *Commercio Libre de Espana*. In addition, the following demonstrate this point:

Anduaga to Harrowby, 10/26/1804, Treasury, PRO ; # 4: 10/22/1804, Custom House Shipment Receipt; T1/933, Doc 550 Treasury, PRO ANNEX 14;

News Article from *London Gazette*, 10/23/1804, Treasury, T1/1086, PRO;

Manifest of belongings loaded on king’s account and on merchants’ accounts, 1/01/1806, Lima, 1440, Doc 273, AGI;

Customs manifest, 03/28/1804, Lima, 648, Doc 276, AGI;

Register of loads with a key showing merchant goods, 10/05/1804, Estado, AGM;

Bustamante to Anduaga re claims, 10/20/1804, Estado 8283, AGS;

Records of raw materials and personal goods taken from Callao, 01/01/1805, Lima, 1440, AGI;

Letter to Miguel de Larrea, 12/20/1804, Estado, 8282, AGS;

Petition from Don Joaquin Gregorio de Goycoa to allow embarkation of private goods as a result of loss of two brothers 12/04/1805, Individual Affairs, 7139/L, AGM;

Letter to Viceroy of Peru, 09/5/1804 (and various other dates), Indiferente, 1348, Docs 12, 157, 40, 311, 355, AGI.

³⁴ Anduaga to Pitt, regarding peacetime status and mistaken idea that goods were King’s, 12/10/1804, Estado 8384, N. 160, AGS. By stating that only about one quarter of the goods and money were the

arrival, fully consistent with a freight charge, not an import tariff to Spain.³⁵ The *Mercedes* was reported by British intelligence as “not half-manned” before its departure.³⁶ Several reliable and Spanish-authored secondary sources note that on the ships of the flotilla, guns had been removed from the gun decks to provide accommodations to passengers. Cesareo Fernandez Duro, in *Armada Espanola*, states that the gun decks were converted to cabins.³⁷ Another Spanish historian, Agustin Rodrigues Gonzalez, noted that the Spanish had “removed the principal pieces of its battery in all or in part to make space for cargo and passengers” (in the original: “*desembarcar las piezas de su bateria principal en todo o en parte para dejar espacio a la carga y pasaje*”). He goes on to state that the ships were taken by surprise, with their movements on board of the defensive forces obstructed by the merchants and the civilian personnel, and by the fact that they were under inferior arms.³⁸

13. *Documentary evidence leads me to conclude that the Mercedes was engaged in work of the Correos Maritimos (that is, Maritime Mail).* The Spanish Navy had recently assumed responsibility for operational management of the men and ships of the Maritime Mail fleet. In Montevideo, this process began in December 1802. Governor Bustamante, who later commanded the flotilla of four ships, was also Commander of the Navy in Montevideo through 1802 and 1803, and he took over local funds and administration of the *Correos Maritimos* in 1803-1804. The *Correos Maritimos* rules following the merger

King's, Anduaga apparently meant to include in that category both personal property of the Monarch and funds and property of the Spanish government. ANNEX 15

³⁵ The 1 per cent shipping charge collected is documented in Antonia Heredia Herrera, “*Documents of the Correos Maritimos*,” p. 859. The document shows that the shipping fee was collected at the port of departure. ANNEX 13

³⁶ Cornwallis to Collingwood, October 3, 1804, document #353, p. 86 in *Blockade of Brest*, reporting on the ships' status 10 July 10, 1804. ANNEX 6

³⁷ Cesareo Fernandez Duro, *Armada Espanola*, p. 265.: CH-725, Vol VIII, AGI. ANNEX 16

with the Royal Navy required that the administrative side, such as dispatching and control of *Correos Maritimos* ships, should be in the hands of the civil government, not the military. The rules also spelled out that the naval ships assigned to *Correos Maritimos* voyages would return with public and private monies and goods to Spain, just such a trip as that taken by the *Mercedes* on August 9, 1804 from Montevideo for Cadiz. The regulations also specified that the officers would include former *Correos Maritimos* officers including specific crew members.³⁹ The combination of civil and military administration in the incorporation of ships and manpower of *Correos Maritimos* into the Navy was an economy measure similar to other such mergers on land in the colonies. The regulations handed over ships, supplies, and men to the navy. The rules made it clear that the *Correos Maritimos* would remain in charge of the administrative, organizational, and judicial side of the service. Under the joint operations, the navy would have to handle complaints of civil and criminal cases under *Correos Maritimos* rules; that is, unlike the situation on military ships, an individual with a grievance (such as a claim over lost properties) could sue for redress under *Correos Maritimos* rules. By 1804, the Spanish Navy provided specific ships on specific voyages to transport mail and private cargo

Evidence that supports the view that the *Mercedes* was performing just such work under the new rules is as follows. The rules indicated that the naval ships assigned to the mail service include former *Correos Maritimos* personnel. Three aboard the *Mercedes* have been identified as former *Correos Maritimos* personnel. One maritime rule stated

³⁸ A.R. Rodriguez Gonzalez, *Trafalgar y el conflicto naval anglo espanol del siglo XVIII* (Madrid: San Sebastian de los Reyes, Actas, 2005), p. 309. ANNEX 13

³⁹ Specific notes from *Correos* 387A and *Correos* 465A show Bustamante administering *Correos* matters and funds in 1803-1804, summary of notes taken from *Correos* Files, AGI. ANNEX 17

that after the merger, *Correos Maritimos* officers would not lose pay or other perquisites, and they were to get the pay equivalent of naval officers of the same rank.⁴⁰ One of the officers aboard, Lieutenant Don Luis Abello, specifically noted on his 1803 outward bound trip from Spain aboard the *Mercedes*, that as a former *Correos Maritimos* officer, he deserved pay at the same level as the naval officers aboard. His request was supported by *Correos Maritimos* officials. This former *Correos Maritimos* officer was aboard on October 5, 1804. Abello invoked the Maritime Mail rules about equality in a request sent to Felix de Tejada, the Navy's commandant at Ferrol and also the ranking liaison with the *Correos Maritimos*. Tejada forwarded the request to Madrid in a letter which began by explaining who Abello was, and what his duties were: "The Frigate-ensign, Luis Abello, originating from Maritime Mail and embarking on the Frigate *Mercedes* destined for Lima" The letter goes on to deal with the fine details of when and how Abello had been paid, and then placed the issue of pay in the context of the voyage of *Mercedes* as a ship operating under Maritime Mail rules: "... the nature of this trip varies from other sea-bound trips since Maritime Mail is involved...." Because the newly-instituted rules gave *Correos Maritimos* officers taken into the Navy the right to equivalent pay and rank, Tejada recommended approval of the adjustments Abello requested. Tejada's correspondence establishes that the *Mercedes* sailed under assignment for the Maritime Mail.⁴¹

⁴⁰ Rules showing civilian administrative control of the *Correos Maritimos* (after the merger of the ships into the Royal Navy) [ANNEX 18], and showing Governor Bustamante in charge of *Correos Maritimos* affairs in Montevideo, are found in various dates, Correos, 386, 387A, 188A, AGI. ANNEX 17

⁴¹ There may have been other former *Correos Maritimos* staff or officers aboard the *Mercedes*, as the records demonstrating the former service of the following three have been obtained from widely dispersed records. Don Luis Abello is shown on *Correos Maritimos* staff on April 7, 1802, and on February 23, 1803 in Buques, Correos Generales, 1781-1803, and Tejada's response to petition in: 7511L, AGM [ANNEX 19]; Abello is shown aboard *Mercedes* in October 1804, in Claimant's Exhibit A, p. 9. Widow pension General Corr, 620/2, AGM.

His widow petitioned for an increase in the pension she was already receiving from the *Correos Maritimos*.⁴² One of the surgeons aboard the ship, Jeronimo (or Geronimo) Agustino, was a former *Correos Maritimos* officer.⁴³ Also, Alfarez (Second Lieutenant) of the ship, Bernardino Eguia Sanz Buruaga was also a former *Correos Maritimos* officer. Eguia asked for admission to naval school, in accord with *Correos Maritimos* rules.⁴⁴ Furthermore, the ship carried 32,000 pesos of the *Correos Maritimos* funds, and only ships assigned to the *Correos Maritimos* duties would carry such funds.⁴⁵ The standard rate for carrying private cargo by the *Correos Maritimos* was one per cent of the value of the goods or money transported, and that one per cent charge was collected aboard the *Mercedes*.⁴⁶ In the light of all of these pieces of documentary evidence, it is reasonable to conclude that this ship was on *Correos Maritimos* packet service on this voyage. No other explanation quite explains all of these multiple indications of a *Correos Maritimos* assignment. That would mean that the administrative, organizational, and judicial responsibility for the ship on this voyage was civilian, not military.⁴⁷

14. *The rapid defeat of the Spanish ships further demonstrates that the ships were unprepared for a military engagement, and that they were naval ships engaged in a*

⁴² Correspondence forwarding the widow's request for an increase in her pension from the *Correos Maritimos*, Cuerpo general, 620/2, AGM. ANNEX 20

⁴³ Surgeon Jeronimo (or Geronimo) Agustino is shown in AGM7511L as on *Correos Maritimos* staff list on April 7, 1802; he is shown aboard *Mercedes* in October 1804, in Claimant's Exhibit A, p. 10.

⁴⁴ Bernardino Eguia Sanz Buruaga as former *Correos Maritimos* officer is established in personnel records as located in: 01/19/1803, 08/10/1802, and 8/16/1802, General Corps, 620/353, AGM [ANNEX 21]; he is shown aboard the *Mercedes* in October 1804, in Claimant's Exhibit A, p. 9 (shown there as a "Teniente de Fragata.") request for training : 620/353 AGM.

⁴⁵ The frigate *Mercedes* carried 32,000 pesos of receipts for the *Renta de Correos*, Estado, 73, N.147, AGI; the amount consisted of two lots, one for 28,000 pesos, and one for 4,000 pesos, as noted on pages N19 and N43 respectively, in the document collection *Comercio Libre de Espana*,. ANNEX 22

⁴⁶ The collection of the 1 per cent fee aboard the *Mercedes* from each of the merchants is shown in *Comercio Libre de Espana*. ANNEX 33

⁴⁷ Details of incorporation of the *Correos Maritimos* into the Royal Navy: various dates, Correos, 386, 387A, 188A, AGI. These notes provide background on how the *Correos Maritimos* was integrated into the

commercial and packet voyage in time of peace. An engagement of four frigates against four frigates might have been expected to be somewhat equal if both sides had been prepared for conflict. Although the Spanish frigates were able to mount a brief, spirited defense, the brevity of that engagement demonstrates that they were unprepared for a warlike mission. Accounts of the battle by contemporaries reflect the fact that the Spanish ships were outgunned and were unprepared.⁴⁸ It would not have been appropriate or “honorable” for four Spanish ships to meekly accept an illegal order from four British ships, even when it was apparent that those four British ships had superior arms.⁴⁹ A major British historian in a recent work noted the fact that the Spanish ships fought at all was an effort to maintain “honour,” rather than a full-scale military effort.⁵⁰ The historian Agustin Gonzales spells out in detail how the Spanish ships were surprised. He states that there was a “*tremenda diferencia entre un buque de guerra preparado*” and one “*solo lo esta para el servicio normal en tiempos de paz,*” that is, a tremendous difference between a prepared ship of war and one only prepared for normal service in time of peace. The documents and the secondary literature reveal how difficult it must have been to put up even a minimum defense given the conversion of gun decks to passenger and cargo space, and with passengers and cargo obstructing the efforts of the

Royal Navy. Among other findings, the researcher noted that the *Medea* (one of the ships captured on October 5, 1804) carried cargo for the *Correos Maritimos* (p. 6 in the notes). ANNEX 17

⁴⁸ In addition to the treatment by Hugo O'Donnell that shows the ships outgunned, in *La Campana de Trafalgar, tres naciones en pugna por el dominio del mar (1805)* (La esfera de los Libros, Madrid, 2005), p. 56-57, [ANNEX 3] note that all other detailed scholarly treatments of the engagement refer to the fact that the Spanish cargo-carrying frigates were outclassed by the British war frigates. The treatment by Agustin Ramon Rodriguez Gonzales, for example, comments that the each of ships was laden down like an “*urca*” or supply /transport ship with the guns removed. *La Campana de Trafalgar*, p. 309. ANNEX 13

⁴⁹ Comments that show that it would have been dishonorable not to fight back News Article from *London Gazette*, 10/23/1804, Treasury, T1/1086, PRO [ANNEX 24]; Cesareo Fernandez Duro, *Armada Espanola*, p. 265m CH-725, Vol VIII, AGI. ANNEX 16

⁵⁰ As noted by N.A.M. Rodger, *The Command of the Ocean: A Naval History of Britain, V. 2, 1649-1815* (London: Allen Lane, 2004), p. 531-533. ANNEX 25

sailors to return fire against the British ships.⁵¹ Furthermore, a close comparison of the normal complement of officers and men aboard with those aboard the *Mercedes* at the time of her destruction as noted earlier, reveals that the ship was extremely undermanned, particularly in senior seamen, artillerymen and armorers.⁵²

15. *Contemporary eyewitnesses described the destruction of the Mercedes as so complete that it is altogether possible that there would be no shipwreck beneath where the ship exploded.* From an examination of the documents it is quite clear that the *Mercedes* was destroyed by the explosion. Numerous eyewitnesses stated that the ship “*salto por los aires*” [jumped for the heavens or “blew sky high”], “blew up,” or “disappeared.”⁵³ Documents collected and published from the Spanish archives, as translated, indicate that the ship was not only destroyed, but that it “vanished.”⁵⁴ One survivor reported that he clung to a piece of moulding from the prow of the ship that drifted away from the point of the explosion for at least an hour and a quarter before he

⁵¹ Agustin Ramon Rodriquez Gonzales, *La Campana de Trafalgar*, p. 309. ANNEX 16

⁵² A study compiled from documentary sources of the complement, shows that the *Mercedes* was undermanned on the voyage from Montevideo, particularly in senior seamen, artillerymen and armorers. The study, entitled: “Crew Complement Comparisons-NS Mercedes,” is annexed. A full complement would be 348, whereas those aboard were by Capt. Moore’s account only 280. ANNEX 26

⁵³ Many documents use the expression in English, “blew up,” or in Spanish, “*salto por los aires*” (“jumped for the heavens,” literally or “blew sky-high,” figuratively translated). Among those using these expressions are as follows:

Memorial by Graham Moore, Treasury, 12/31/1805, T1/1086, 748, PRO;
Don Pedro Afan de Ribera petition, 10/05/1804, Cuerpo General, Leg 620, Doc 9, AGM;
Don Diego de Alvear letter, 9/10/1805 Buques, Leg. 1176, Doc 5, AGM;
Miguel de Zapiain, Action Report, Cuerpo General 620, Doc 1298, AGI;
Log of the *Amphion*, ADM 51, 4409, PRO;
Log of the *Lively*, ADM 51, PRO;
Log of the *Indefatigable*, ADM 51, PRO;
Log of Captain Graham Moore, ADM 51, PRO;
Bustamante: *Diario de Navegacion*, 10/04/1804, p 380, AGM.
ANNEX 27

⁵⁴ The use of the term “vanish” appears in Gonzalez-Aller: “...and the vanishing of the fourth,” p. 188, doc. 30, the British attacked four ships “with profits from those lands, vanishing one of the ships.” p. 186, doc. 2. Gonzalez-Aller, *The Trafalgar Campaign*. ANNEX 7

was rescued. This and other accounts strongly suggest that floating bits of flotsam from the ship drifted far from the site of the explosion.⁵⁵

16. *The losses by private parties of goods and money from aboard the Mercedes were regarded by individual claimants, by the British authorities, and by Spanish authorities as private claims.* The details of these claims demonstrate a number of pertinent points regarding the nature of the voyage. Not only was the voyage a commercial one in that the goods and specie were items of commerce, but a great proportion (more than seventy per cent) of the specie was clearly owned by private parties. The private nature of the goods and specie was recognized by all the parties involved. In order to support claims for such losses, individuals provided official Spanish documents. The claims were seriously reviewed by British authorities. Questions arose as to the method of reimbursement, and as to the specific amounts that should be awarded to particular individuals, but the British, the Spanish, and the individuals all agreed that there had been extensive private-party losses aboard the *Mercedes*. The claims were not simply claims for luggage or personal goods, but were for the hundreds of thousands of pesos shipped aboard.⁵⁶ The documents also show that the claimants themselves at the time including some Spanish government employees, treated their claims for losses aboard the *Mercedes* as private claims. Some of them were represented by British legal firms. The claims by individual seamen and officers against the “*Caja de Soldadas*” were treated as private

⁵⁵ The account of December 12, 1804 by Don Pedro Afan de Ribera indicates that he survived by clinging to a fragment of the prow that drifted away from the site of the explosion for more than an hour and a quarter. This fragment was the only reported large piece of the ship after the detonation: Don Pedro Afan de Ribera petition, 12/12/1804, Cuerpo General, Leg 620, Doc 9, AGM. ANNEX 27

⁵⁶ Petitions, letters, and other documents that reflect the private nature of the claims, some against funds and goods on the surviving three frigates, are found in:

Harrison, et al., on behalf of Don Jose de Gorbea, 11/21/1807, Treasury, TS8/18, 122, PRO;
Harrison, et al., on behalf of Don Jose de Gorbea, 12/13/1808, Treasury, TS8/18, PRO;
Manuel de la Torre claim, 2/18/1805, T1/938, PRO;
Warrant for 6,000 pounds, 08/16/1805, Buques, Leg 1176, AGM;
Claim by widow of Goycoa, 11/26/1805, Buques, Leg 1176, AGM;
Petition from Don Pedro Afan de Ribera, 12/09/1805, Buques, Doc 5, AGM;
Petition from Don Diego de Alvear, 09/10/1805, Buques, Leg 1176, AGM;
Letter from Fermin De Tastet, 06/15/1805, Estado, AGI;
Order paying claim of Don Diego Alvear, 09/10/1805, Buques, Leg 1176, Doc 474, AGI;
Bustamante to Gil, 03/28/1806, Estado, AHN;
Alvear to Gil, 05/13/1806, Estado, 6212, AHN.
ANNEX 28

claims; the Spanish government itself categorized the *Caja de Soldadas* as “*Particulares*,” that is, in the same category as privately-owned cargo or money.⁵⁷

17. *Spanish government officials, including diplomatic representatives of the Spanish crown, at the time, treated the claims for losses aboard the Mercedes by private parties as private claims, and they supported the private claims.* Researchers have located several documents by Spanish authorities, including Spanish Minister Plenipotentiary to England Joaquin de Anduaga and others, explicitly referring to private claims in the loss of the *Mercedes*.⁵⁸ In addition, researchers have located several inventories prepared by Spanish authorities detailing private goods aboard that ship on that voyage, as well as voluminous official Spanish records showing the holdings of specific private merchants aboard the *Mercedes*.⁵⁹

⁵⁷ Documents regarding soldier’s claims:

Manuel de la Torre claim, 2/18/1805, T1/938, PRO;
List of money owed to surviving crew of *Mercedes* then on *Santa Clara*. 12/05/1804,
Secretaria/Fondos Reservados, Leg 5107, Doc N2, AGM;
Canning to Alvear, 09/12/1805, No. 3, PRO;
Bustamante to Anduaga, 10/20/1804, Estado, 8283, AGS;
Claim from Manuel de la Torre, 2/26/1805, Arribadas 360, AGI;
Letter from Don Miguel Cayetano Soler, 05/25/1806, Estado AGI;
Don Diego Alvear letter, 05/21/1806, Buques, 1176/474, AGM;
Don Diego Alvear letter, 06/29/1806, Buques, 1176/474, AGM
ANNEX 29

⁵⁸ Documents by and about Spanish officials, regarding private nature of claims:

Spanish Minister Plenipotentiary to Britain Anduaga to Harrowby, 10/26/1804, Treasury, PRO;
12/22/1804, Custom House Shipment Receipts; T1/933, Doc 550 PRO;
11/20/1804, Fuge, the Spanish Vice-Consul in Plymouth, turned over care of the claims to Larrea
and others, Estado 8882, AGS;
Spanish Minister of Foreign Affairs Pedro Cevallos to Miguel de Larrea, 12/11/1804, Estado,
6201/3, 58, AHN.
ANNEX 30

⁵⁹ A manifest prepared in Montevideo is a very complete inventory of goods aboard, showing the distinction between goods on account of the King, and goods on account of *Particulares* or private merchants. Other inventories, carefully prepared, document exactly which merchant had specific amounts of specie or goods aboard, their value, and the shipping charge of one per cent collected. The 173-page transcription of *Commercio Libre de Espana*, provides specific detail as to the amount shipped by each merchant and the one per cent charge made. The fact that the one per cent charge collected at the point of departure was a cargo charge is documented in Antonia Heredia Herrera., *Los Fondos Documentales De Los “Correos Maritimos”: Una Seccion Del Archivo General de Indias*, from the proceedings of *Coloquio International de Historia Maritima*, v. IV. cited henceforth as *Documents of the Correos Maritimos*, p. 859. ANNEX 31

18. *The value of goods and specie aboard the Mercedes, owned by specific private individuals can be clearly established.* An extensive review of the private goods and specie owned by specific merchants aboard the *Mercedes* prepared by Odyssey Marine research staff has identified the individual merchants with specific amounts of cargo aboard. Many were prominent, licensed merchants, shown by cross-references between the primary documentation and scholarly accounts of Spanish trade in the period, such as the work by Patricia Marks, *Deconstructing Legitimacy*.⁶⁰ The specific amounts of specie and trade goods owned by or consigned to specific merchants have all been documented by Odyssey staff on a spreadsheet. I have reviewed that spreadsheet. I find that the work represents accurate historical scholarship from multiple authentic sources and that it meets the canons of the profession.⁶¹

19. *In the light of all of the evidence cited here, it is clearly incorrect to hold that the cargo of the ship is subject to the doctrine of sovereign immunity as a warship on a war mission in time of war.* Rather, the facts demonstrate that the ship was a naval ship on *Correos Maritimos* assignment. The ship was only defensively armed in compliance with British demands regarding Spanish neutrality. The ship was only partially manned. The ship carried commercial and governmental cargo, but the vast majority of that cargo was owned and claimed by private individuals. The ship was devoted to cargo and passenger carriage and it was clearly on a peaceful mission, in time of peace. The maritime incident of the destruction of the ship during a period of peace and neutrality recognized by both Spain and Britain was a major cause of the later decision by the Spanish Crown to declare that Britain had initiated a state of war.

⁶⁰ Patricia Marks, *Deconstructing Legitimacy: Viceroy, Merchants and the Military in Late Colonial Peru*, (University Park: The Pennsylvania State University Press, 2007). Other works used include Cristina Anna Mazzeo de Vivó, *El Comercio Libre en el Peru: las estrategias de un comerciante criollo*, Jose Antonio de Lavalle y Cortes 1777-1815 (Lima, Peru: Pontificia Universidad Catolica del Peru, 1994), and Cristina Ana Mazzeo de Vivó, *et al*, *Los Comerciantes limenos a Fines del siglo XVIII: capacidad y cohesión de una élite, 1750-1825* (Lima, Peru: Pontificia Universidad Catolica del Peru, 1999) ANNEX 32

⁶¹ The chart is documented from numerous sources. In addition to published scholarly works used to identify particular merchants, the primary documentation includes Heredia Herrera, *Documents of the Correos Maritimos*, and the detailed accounts found in *Comercio Libre de Espana*, for the year 1804. These records show the exact amount of specie or goods shipped aboard the *Mercedes*, and the one per cent charges collected in Lima were noted by Vicente Antonio Murrieta, the *Maestra de Plata* aboard the ship. ANNEX 31